

**BOARD OF COUNTY COMMISSIONERS
AGENDA ITEM SUMMARY**

Meeting Date: 06/18/03

Division: Growth Management

Bulk Item: Yes X No

Department: Planning

AGENDA ITEM WORDING: Approval of a resolution rescinding the Historic Designation from "The Hermitage" for failure to comply with the constitutional due process.

ITEM BACKGROUND: The site is located at 25340 4th Street, Summerland Key, Real Estate Numbers 196690, 196970 and 115100. On June 25, 2001, the Historic Preservation Commission signed Resolution H01-01 recommending approval to the Board of County Commissioners. The applicant failed to properly post the 30-day notice stating the date, time and location of the hearing to adopt the designation.

PREVIOUS RELEVANT BOCC ACTION: On July 19th 2001 the Board signed Resolution #276-2001 approving the historic designation of "The Hermitage".

CONTRACT/AGREEMENT CHANGES: N/A

STAFF RECOMMENDATIONS: Approval

TOTAL COST: N/A

BUDGETED: Yes No

COST TO COUNTY: N/A

SOURCE OF FUNDS: N/A

REVENUE PRODUCING: Yes No X **AMOUNT PER MONTH** **Year**

APPROVED BY: County Atty X OMB/Purchasing Risk Management

DIVISION DIRECTOR APPROVAL:


Timothy J. McGarry, AICP

DOCUMENTATION: Included X To Follow Not Required

DISPOSITION:

AGENDA ITEM # 176

RESOLUTION NO. -2003

A RESOLUTION BY THE MONROE COUNTY BOARD OF COUNTY COMMISSIONERS RECOGNIZING THAT THE HISTORICAL DESIGNATION OF THE HERMITAGE, 25340 4TH STREET, SUMMERLAND KEY, MONROE COUNTY, FLORIDA, REAL ESTATE NUMBERS 196690, 196970, AND 115100, IS VOID AB INITIO FOR FAILURE TO COMPLY WITH DUE THE MONROE COUNTY DUE PROCESS REQUIREMENTS.

WHEREAS, Monroe County Code, Section 9.5-45 (c), requires the posting of a 30-day notice stating the date, time, and location for the hearing at which a proposed historical designation is to be discussed and acted upon;

WHEREAS, Monroe County Code, Section 9.5-45 (f), requires the applicant to provide an affidavit and photographic evidence, showing that the applicant has complied with such notice requirements;

WHEREAS, Dr. Gregory Klimock, the owner of "The Hermitage," 25340 4th street, Summerland, real estate numbers 196690, 196970, and 115100, applied for historical designation in April 2001; the Monroe County Historic Preservation Commission recommended designation on July 18, 2001, and the County Commission ratified the designation on July 18, 2001;

WHEREAS, the applicant affirms that he never posted such notice; and

WHEREAS, the file maintained by the Historic Florida Keys Foundation contains no affidavit or photograph indication that the required on-site notice was ever posted;

NOW THEREFORE; BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF MONROE COUNTY, FLORIDA, THAT:

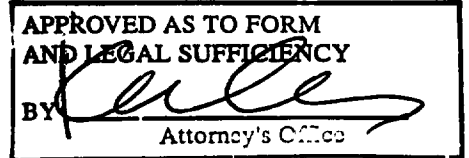
The historical designation of "The Hermitage" is void ab initio for failure to comply with due process requirements.

PASSED AND ADOPTED by the Board of County Commissioners of Monroe County, Florida at a regular meeting held on the _____ day of _____, A.D., 2003.

Mayor Dixie M. Spehar
Mayor Pro Tem Murray E. Nelson
Commissioner Charles "Sonny" McCoy
Commissioner George Neugent
Commissioner David P. Rice

BOARD OF COUNTY COMMISSIONERS
OF MONROE COUNTY, FLORIDA

(Seal)
Attest: DANNY L. KOLHAGE, CLERK



BY: _____

25340 4th St.

Summerland Key, FL

33042

4/10/03

George Born
Historic Florida Keys
Foundation
Key West, FL

Dear Mr. Born :

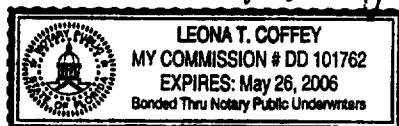
I did not post the required notice
of impending historical designation in front
of my property because I was not aware
of the requirement.

Sincerely,

Regina H. Haddock

State of Florida
County of Monroe 4-10-03

Leona T. Coffey



Hugh J. Morgan
James T. Hendrick
Karen K. Cabanas
Robert Cintron, Jr.

LAW OFFICES
MORGAN & HENDRICK
317 WHITEHEAD STREET
KEY WEST, FLORIDA 33040
TELEPHONE 305.296.5676
FACSIMILE 305.296.4331

W. Curry Harris
(1907-1988)
Hilary U. Albury
(1920-1999)

MEMORANDUM

TO: George Born
VIA FACSIMILE 293-6348 & U.S. MAIL

FROM: Karen Cabanas *KC*

DATE: March 5, 2003

RE: Historical Designation Status of Hermitage

In response to your memorandum of February 21, 2003:

If the property was designated without the required posting and notice requirements, the resolutions designating the property are void as a matter of law for failure to comply with constitutional due process. However, rather than have a public record indicating that the property is designated, a new resolution should be prepared and adopted. Please prepare a resolution to go before the Commission along with a staff report indicating that the required posting and notice was not made. These are factual findings that the Commission will need to make, based on the staff report and contents of the file. The new resolution should indicate that the prior designation is rescinded as void for failure to comply with due process. Though it is not legally required that a new resolution be adopted since the original is void on its face, it would be best if the public records reflected a new resolution indicating the rescission and its grounds. This would allow any member of the public to discover that the property is in fact not designated and would also appear in a title search performed as to this property.

PRIVILEGED MATERIAL (attorney-client/work product): The information contained in this message and attached document(s) is confidential and privileged. It is intended only for the use of the individual or entity identified. If you are not the intended recipient, please do not disseminate, distribute or copy. Instead please notify us at 305.296.5676 immediately.

MAILING ADDRESS: P.O. BOX 1117, KEY WEST FL 33041
E-MAIL: KCabanas@morganandhendrick.com

RESOLUTION NO. 276 - 2001

A RESOLUTION BY THE MONROE COUNTY BOARD
OF COMMISSIONERS GRANTING THE DESIGNATION
OF "HISTORICAL AND CULTURAL LANDMARK" TO
"THE HERMITAGE," 25340 4TH STREET,
SUMMERLAND, REAL ESTATE NUMBERS 196690,
196970, AND 115100.

WHEREAS the "The Hermitage" meets the criteria for
"designation of historical properties" as specified in
Section 9.5-454 (a) (1) and (2) of the Monroe County Code,
Amended, in that the structure is significant in the history
of Monroe County and is associated with the lives of
individuals significant in the past; and

WHEREAS the procedures of historic designation set forth
in Section 9.5-455 of the Monroe County Code, Amended, have
been followed, in that:

1. The proposed designation was initiated by Mr. Gregory
Klimock, owner of "The Hermitage," who submitted an
application dated April 1, 2001;
2. A designation report dated June 7, 2001, was prepared by
George Born, Historic Preservationist, Historic Florida
Keys Foundation, serving as staff to the Historic
Preservation Commission;

3. The above materials established the basis for designation under Code Section 9.5-454 and included other evidence that supports the designation, documenting the historic, social, and cultural significance of the structure;
4. The Monroe County Historic Preservation Commission, during a regular session held on June 18, 2001, conducted a public hearing on the proposed designation and reviewed the application for designation;
5. The Historic Preservation Commission voted unanimously at said public hearing to recommend to the Monroe County Board of Commissioners that the Board grant historical designation to the structure, as stated in the Historic Preservation Commission Resolution No. H01-01; and

WHEREAS the Monroe County Board of Commissioners has considered the proposed designation and the recommendation of the Historic Preservation Commission; NOW THEREFORE,

BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF MONROE COUNTY, FLORIDA, THAT:

The "The Hermitage" is hereby historically designated as provided by Article VIII of the Monroe County Code, Amended.

RESOLUTION NO. H01-01

A RESOLUTION BY THE MONROE COUNTY
HISTORIC PRESERVATION COMMISSION
RECOMMENDING THAT THE MONROE COUNTY BOARD
OF COMMISSIONERS GRANT THE DESIGNATION OF
"HISTORIC AND CULTURAL LANDMARK" TO "THE
HERMITAGE," 25340 4TH STREET, SUMMERLAND,
REAL ESTATE NUMBERS 196690, 196970, AND
115100.

WHEREAS the Monroe County Historic Preservation Commission during a regular meeting held on June 18, 2001, conducted a public hearing to discuss recommending the designation of the "The Hermitage" as a "Historic and Cultural Landmark" as provided by Article VIII of the Monroe County Code, Amended; and

WHEREAS the Historic Preservation Commission was presented with the following evidence, which by reference is hereby incorporated as a part of the record:

1. An application for designation dated April 1, 2001, completed by Gregory Klimock, owner of "The Hermitage"; and
2. A staff report dated June 7, 2001, prepared by George Born, Historic Preservationist, Historic Florida Keys Foundation, serving as staff to the Historic Preservation Commission;

WHEREAS the Historic Preservation Commission has made the following Findings of Fact and Conclusions of Law:

1. Based on the evidence produced at the hearing, including the testimony and the written data, the Commission finds that "The Hermitage" is both significant to the history of Monroe County and associated with the lives of individuals significant in the past, meeting the standards for designation as specified in Sec. 9.5-454 (a) (1) and (2) of the Monroe County Land Development Regulations; NOW THEREFORE,

BE IT RESOLVED BY THE HISTORIC PRESERVATION COMMISSION OF MONROE COUNTY, FLORIDA, that the preceding Findings of Fact and Conclusions of Law support their decision to RECOMMEND that the Monroe County Board of Commissioners designate "The Hermitage" a "Historic and Cultural Landmark" as provided for by Article VIII of the Monroe County Code, Amended.

PASSED AND ADOPTED by the Historic Preservation Commission of Monroe County, Florida, at a regular meeting held on the 18th day of June, 2001.

Chair Allen YES.

Vice-Chair Silvia YES.

Commissioner Clupper YES.

Commissioner Johnson Yes.

Commissioner Lloyd YES.

HISTORIC PRESERVATION COMMISSION OF
MONROE COUNTY, FLORIDA

By



Alice Allen, Chair

Signed this 20 day of June, 2001.

